

## MINUTES

### ENVIRONMENTAL REVIEW COMMISSION

**Thursday, January 15, 2009, 9:30 a.m.**

**Room 643, Legislative Office Building**

The Environmental Review Commission (ERC) met Thursday, Jan 15, 2009 at 9:30 a.m. in Room 643 of the Legislative Office Building. Co-Chair Representative Pryor Gibson presided. (*SEE ATTACHMENT: Members and Guests Attending.*)

There being no introductory remarks from any Co-Chair, Commission Counsel George Givens gave run down of the day's agenda and other pertinent information. He said that the ERC would meet again on January 22. That meeting, he said would close out the reports of the 2008-2009 interim period. Mr. Givens said that the ERC would likely meet again during the early part of the upcoming Session of the General Assembly. As to this meeting, he said that Members' packets would contain the various reports. The staff planning meeting for this meeting and the January 22<sup>nd</sup> meeting took place on January 6<sup>th</sup>. By way of a preview of the next meeting, he said that there would be a report on the Stanley County-ALCOA issue, which continues with staff and attorneys involvement. Mr. Givens said there would be additional reports on Water Allocation which would lead to legislation for the 2009 Session. Other items which had been deferred to that time include a status report the Stanly County-ALCOA issue, which has staff and attorneys for both sides involved. At the January 22<sup>nd</sup> meeting there would be additional information provided on the Disclosure of Coastal Hazardous Waste, Sedimentation Pollution, Parks and Recreation, Land Conservation, and Air Quality.

Before the presentations, Co-Chair Gibson urged ERC members to pay close attention to the 90 or so reports the ERC would receive. Furthermore, any Member who had an idea for legislation should contact staff as soon as possible. Mr. Givens followed by saying that the staff needed to meet with the Co-Chairs on possible legislation. The filing deadline for the Session is earlier than usual, thus there should be very few public bills to be put forth.

Additional matters include:

- The new Secretary of DENR, Mr. Dee Freeman has been invited to meet with the ERC.
- Consideration of the minutes for the December 18, 2008 will be carried over until the January 22<sup>nd</sup> meeting.

## **EMC Quarterly Report**

This is the first report given by the new Chairman of the Environmental Management Commission (EMC), Mr. Stephen Smith. The report covers the EMC work from October 1, 2008 until December 31 of the year. (*SEE ATTACHMENT: EMC Oct-Dec. Quarterly Report.*)

Mr. Smith began with a history of the Jordan Lake Rules passed by the EMC. The process began in order to bring Jordan Lake into compliance with the Clean Water Act and reduce the nitrogen and phosphorous levels in the Lake, and comply with State statutes enacted in 1997 and 2005 to form permit rules for reservoirs. The Jordan Lake Rules cover the watershed, which begins near Greensboro and continues to Chapel Hill along the Haw River.

The rule production began with public comments in 2006. Sixty-four organizations provided information and compromises and modifications, which formed a draft in 2007. After the draft report, the hearing officers conducted three public hearings and heard comments. Many of the considerations addressed concerns from local governments. The Attorney General's Office participated with a determination that the EMC does have authority to make these rules. The results are to be presented to the ERC.

The EMC has passed rules concerning heavy duty truck idling. This restriction says that a heavy duty truck can idle no more than five minutes in 60 minute period. After a federal court vacated the Clean Air Interstate rule, which prompted serious criticism, the Court remanded the action. Thus, EPA was given two years to propose regulations, but Mr. Smith said that it was not clear if that was from the time of the order or two years after a draft was available. Meanwhile, he said temporary rules did not apply.

For new or expanding swine farms, the EMC has rules following the 2007 Statute. Then following petition from the Riverkeeper's Association, the EMC began a process to re-classify an intake point on the lower Cape Fear. The Lower Cape Fear Water and Sewer authority wanted the re-classification to allow the intake for potable water. This would serve the Smithfield Plant. This was prompted by a number of polluted wells in the area.

Various buffers, mitigation, and other controls have been put in place for the Goose Creek Watershed in the Yadkin-Wataree Basin. This action is to protect and federally recognized endangered species of freshwater heel splitter mussels.

During questions, Senator Bingham asked about the nutrients going into the Lake Jordan water shed. How much comes from agriculture and how much from development? Mr. Smith said he could provide the information to the ERC. Mr. Smith said that a lot of the land in the watershed that might be considered agricultural was property awaiting development. This was supported by a representative of the Department of Agriculture and Consumer Services.

Senator Kinnaird asked how much pollution could have been avoided in the lake if development had not been allowed? There was no conjecture on an answer. Mr. Smith said that while Jordan Lake was conceived for flood protection and recreation, if such a plan was devised now it would be considered for water supply.

ERC members followed with a brief discussion of the heel splitter mussel and the species value as a water filter organism.

### **Waste Water Discharge Elimination Annual Report**

Mr. Walter Haven from the Division of Environmental Health of the Department of Environment and Natural Resources (DENR) presented the information on the program, called **WaDE** for short. (*SEE ATTACHMENT: Waste Water Discharge Elimination.*) The program began under 1996 legislation to identify failing waste water discharge systems, usually straight pipe elimination operations from residential homes. Funding comes from State appropriations and grants. The program is concentrated in the western part of the State out of the Asheville regional office. The focus is on public health and environmental issues.

WaDE deals with “gray water,” which is discharged from kitchen sinks, washing machines, etc. “Black water” is discharged from commodes. With straight pipe discharge there is no use of a septic system. There is a manager for the program and an environmental senior health specialist, both of whom are full-time employees paid through appropriations. Three part-time employees are used on an as-needed basis and are paid through grants. Success of the program relies on a large amount of coordination with counties in the area.

Investigation of potential problems depends on watershed surveys. The watershed in this case may be as large as some given land area or a smaller area such as a subdivision. Complaints may come to the county from citizens or may be generated by the county itself. Investigation involves door to door canvassing of areas to obtain permission to examine the system. Dyes are used to track sources.

Many of the incidents involve a homeowner who cannot afford to fix the problem. When the owner lacks financial resources grants are used to assist the effort even to the point of installing an entire system. Many times volunteers are used to help install systems. Some of these volunteers are members of church groups, which come to western North Carolina each year to provide the needed labor to correct the problems.

Since 1998 when the program began to operate fully, 13,000 homes have been inspected, 1,800 violations have been found and 944 repairs have been made. There is a lag time between violations being sited and corrections due to labor needs, material needs etc.

In the last year, 200 homes were inspected. 115 violations were noted and 63 systems were repaired. Much of the volunteer work is used as hand labor, since mechanical equipment is not available usually.

In addition to using the dye system technique, a septic tank camera may be used to check the direction of pipelines to the source and the integrity of the piping. Other technology uses GPS and GIS tracking methods.

Responding to a question from Senator Kinnaird concerning possible use of interns to work in the program, Mr. Haven said that the part-time people currently being used are retired county sanitarians, but interns could be a possible source for some work.

During the discussion, Mr. Haven said the WaDE program usually dealt with homeowners, rather than people who were renting from landlords who failed to provide the proper services for the tenants. Furthermore, he said that he would provide numerical information concerning the prevalence of outhouses in the area. He also said that the majority of the systems concerned were in financially depressed areas. There are standards for installing outhouses. Mr. Haven said some State parks used outhouse systems.

Senator Bingham noted that mountainous terrain was difficult for waste system installation, but community treatment systems or spray fields have been used. Mr. Haven said that the work thus far had involved only individual septic systems.

Senator Kinnaird asked if composting toilets were approved for use could they be used? Mr. Haven said that would be an option, but would composting toilets would not deal with “gray water” discharges.

Mr. Haven indicated that the work of the program involves existing home locations, not new construction.

### **Previous Year Fish Kills**

Mr. Mark Hale from the Division of Water Quality of DENR, brought the report for 2008. (***SEE ATTACHMENT: 2008 FISH KILLS.***) The program began in 1996. In 2008 there were 61 fish kills accounting for deaths of 7.5 million fish. This includes kills in both fresh and estuarine waters. The kills occurred in eight of the 17 river basins. Most of the fish kills were in the Tar-Pamlico or Neuse River estuaries. Both of these areas have been the major trouble spots since the creation of the program in 1996. Over half of the events and 92% of the mortality took place in these two basins. Most all of the kills were caused by oxygen depletion. Fish kills caused by spills usually come from sewage or chemical spills from a plant.

Mr. Hale said that the total number of fish kills and mortality peaked in 2001 through 2003 and then dropped. However, in 2008 both the number of fish kills and mortality had spiked

and was the highest since the program began. Forty-four species were affected by the kills. In estuarine waters the most common species affected were Menhaden, Spot and Flounder. In freshwater Sunfish, Shad, and Largemouth Bass were the most affected. Of the 13 events in 2008, over 50,000 fish were killed; over half of these in one event in the Pamlico River.

Drought conditions in 2007 lasted into the winter of 2008, thus no recovery was experienced. Salt water intrusion continued, dissolved oxygen levels persisted and water stratification occurred. Other weather conditions such as wind, rising temperatures had further negative impacts. Following a question from Senator Bingham, Mr. Hale explained water stratification deals with water temperature differences surface to bottom. In the shallow waters of North Carolina estuaries, these differences can change quickly due to weather factors leading to endangering the aquatic life.

Mr. Hale concluded by saying that fish kills could be tracked using Google Earth. The fish kill site was updated weekly between May and October.

Senator Kinnaird asked if development along the Intracoastal Waterway (ICW) contributed significantly to the dangers of fish in the areas. Mr. Hale said there was no doubt that human activity played a role, but it was difficult to measure the extent. He said that data from the 1930s showed fish kills occurred in these same waters. Senator Kinnaird noted that water treatment methods have improved since the 1930s. She asked if there was a method of development measures in place in areas like the ICW similar to the Coastal Area Management Act (CAMA). Co-Chair Gibson said that usually these developments involved local, State and sometimes federal regulations.

Senator Bingham asked how severe a weather event might be to trigger a fish kill? Mr. Hale said it could be a heavy rain or even high wind, which could churn the waters and since these waters are shallow and do not flush well, the dissolved oxygen would become a factor.

## **HAZARDOUS WASTE REPORTS**

### **Annual Hazardous Waste Management Plan**

Ms. Elizabeth Cannon, Chief of the Hazardous Waste Section of DENR provided the report. (***SEE ATTACHMENT: Hazardous Waste Management Plan.***) The annual report also included the annual report on the Implementation of the Resident Inspectors' Program at commercial hazardous waste facilities.

Ms. Cannon's figures were based on 2007. In that year, the 450 largest generators of hazardous waste created 100,000 tons. This is a slight increase in the amount. However, she said that hazardous waste creation seemed to track the economic trends: when the economy trend was down, waste creation also goes down and vice versa. She said that she expected waste

creation to show a decline in the 2009-2010 measures. There are 1900 small generators of such waste, but these are not measured.

The program had oversight of 31,000 gallons of hazardous waste and 667 tons of non-liquid hazardous waste, which resulted in protection of over 3,000 people, most of whom are workers at the generation sites.

In terms of permits, of the 109 sites targeted as high priority, 46% had cleanup remedies completed to protect soil and groundwater and 41% had a structure in place for the needed cleanup. The goal is to have all sites complete with proper structures and process in place by 2020.

In a school chemical cleanout program, the Division oversaw the removal of 3,500 unneeded and out-dated chemicals from high school chemistry labs. Additionally, 500 teachers from across the State have attended workshops on chemical management, green chemistry and microchemistry: using smaller amounts of chemicals in classes.

In response to the **Governor's Hazardous Material Task Force** following the 2006 fire at a hazardous waste site in Apex, Ms. Cannon said that work had been completed in terms of coordination with local response efforts, off-site storage methods, information to nearby residents, and round the clock security and these were in the rule-making stage. Regulations for material transfer, sensitive land use requirements and financial assurance requirements rules were not in place.

Ms. Cannon said there were 35 Hazardous Waste Transfer Sites the Division was directed to examine. She said that these sites were using protective management practices for environmental and worker safety. However, there was no universal set of standards for these safety needs. These are sites, which store materials for no more than ten days before transfer. The Division has recommended written records tracking the materials coming in and going out, site security with particular rules for final containment when a site is closed, annual notification of status, but no financial assurances since DOT already requires this for transporters.

### **Annual Report on Resident Inspectors Program**

This program has been operating for 17 years and covers the commercial hazardous treatment and disposal facilities. In 2007 through 2008, the ten facilities in the State were inspected 469 times. These operations handled about 25,000 tons per year, which is a slight drop. Again, Ms. Cannon said the drop would follow economic trends. She said the largest site, in Reidsville is no longer receiving waste for disposal/treatment and had become a 10-day transfer site.

## **Annual Report on Mercury Minimization**

This program implements removal of automobile mercury switches usually found under the hood or in the trunk. In the first year, July 07 through June 2008, 33,610 switches were removed and shipped to be recycled; totaling 40 pounds of mercury removed from the environment. North Carolina had set a goal of reaching 90% of the national goal, but the North Carolina program has achieved 139% of the national standard. Between July and December of 2008, 16,000 switches have been removed, ranking North Carolina 5<sup>th</sup> in the country for the number of switches removed.

Co-Chair Representative Allen asked if the Environmental Stewardship Program was working. This is a cooperative venture with the Department of Commerce and DENR. Mr. Jerry Hunt from the Division of Pollution Prevention and Environmental Assistance of DENR said that the program was working and that recently **Corning** in Hickory had joined. Mr. Hunt said companies were being rewarded for compliance and working toward hazardous waste reduction.

## **Annual Report on Inactive Hazardous Waste Sites**

Ms. Charlotte Jesneck, Head of the Inactive Hazardous Waste Section of DENR noted that the enabling legislative required an annual report and that House Bill 2436 from the 2008 Session required site specific information to the Members of the General Assembly. (***SEE ATTACHMENT: Annual Report of Inactive Hazardous Waste Sites. SITE SPECIFIC INFORMATION IS ON THE SECTION'S WEB SITE DUE TO VOLUME.***)

Of the 2,972 inactive sites in the State, 442 require no further action. Another 669 sites are old landfills that were used prior to permit requirements. These sites had to be located and identified. The majority of these have schools, residences with drinking water wells either on site or in closed proximity. Groundwater contamination is expected in these areas. In addition other potential hazards come from methane and materials migrating through the soils.

Senate Bill 1492, which was passed in 2007, sets up a disposal tax to deal with assessments and mitigation of the sites. The bill became law in 2008 and the first proceeds should be realized in February 2009.

There are 1,900 non-landfill open cases. Of those, 169 are undergoing responsible party cleanup operations under direction of staff. Various assessments, bankruptcy claims, implementation, sampling and investigation efforts continue. Ms. Jesneck said that about 18 new sites are located each month.

The **Inactive Hazardous Waste Sites Program** has no regular source of funding, however, \$400,000 was obtained from the **Dry Cleaning Solvent Cleanup Act** for so-called "orphan sites." Most of this money will be used for providing water service for locations with contaminated wells.

Ms. Jesneck told Senator Kinnaird that the report could be provided on a county break-out for sites.

Representative Harrison asked about using **Bernard Allen Funds** for the water service needs. Ms. Jesneck said those funds could be used, but that some local governments did not want to participate in extending water lines and the Fund required a cost-sharing arrangement with local governments.

Noting that the \$400,000 had been transferred from the Dry Cleaning Solvent Cleanup Act, Co-Chair Gibson said it was not good to take funds from the dedicated tax programs such as the dry cleaning tax, scrap tire tax, white goods tax, etc. and move that money for other programs. The Co-Chair told Representative Tucker that the transfer had been made by the Appropriations Committees. After Co-Chair Gibson promised to introduce legislation to stop such “raiding” of these funds, Representative Allen agreed to support. The Co-Chair applauded the efforts presented by Ms. Jesneck particularly with not direct fund. He went on to say that the “tipping fee” was dedicated to cleaning up the 67 orphan sites.

Commission Counsel Givens noted that the North Carolina Constitution required the Governor to balance the budget and this had been taken as leave to make such funds transfers. At the same time another provision said tax proceeds should only be used for the purpose directed. In a suit over **Title V Federal Air Quality** funds, the State was forced to pay that money back when it was transferred to another purpose.

The Co-Chair asked that staff and DENR representatives provide ERC members with briefs of the environmental litigation the State was involved in before the next meeting of the ERC.

### **Annual Report on Brownfields Reuse**

Mr. Bruce Nicholson, Brownfields Program Manager of Division of Waste Management of DENR, said his report provided good news. (*SEE ATTACHMENT: Brownfields Property Reuse Act.*) Mr. Nicholson said 24 reuse agreements had been signed between Oct. 1, 2007 and Sept. 30, 2008. That brings the total agreements to 131 and a \$4 billion private investment for the program; \$1 billion in this past year.

Mr. Nicholson said this resulted in revenue for the State and local governments and for job creation. While there are some federal funds through the EPA, there are no State funds expended.

In response to Senator Kinnaird, Mr. Nicholson said the cleanup efforts often used funds from various cleanup projects, i.e. dry cleaning funds, etc. At other times, the re-developer might invest in the cleanup themselves or make arrangements with the party responsible for the polluted site.



North Carolina received \$2.7 million on EPA grants to local governments in the past year. The Brownfields program joined with the Rural Center to sponsor two workshops aimed at providing information for local governments on how to obtain federal grants and other funds.

With potential redevelopment efforts outstripping staff availability, the Program has begun a fast track approach, which allows an applicant to pay a larger fee to avoid the waiting list. The normal fee of \$5,500 is increased to \$30,000. A compliance structure is in place to assure the necessary steps are followed by the redevelopers.

Responding to Senator Bingham's inquiry, Mr. Nicholson said that some re-developers could seek a permit on a site with little or no data on the possible pollution. The prospective developer will make the assessment. If there is no earlier date, Mr. Nicholson said the Program would require the site be made safe, with such things as suitable groundwater.

Representative Allen had some questions about a site in western North Carolina where a DuPont Plant had closed. This was not a Brownfield Site, and Mr. Dexter Matthews said he would brief her on the site.

### **Annual Report on Dry-Cleaning Solvent Cleanup Act**

Mr. Jonathan Powers, Head of the Dry-Cleaning Cleanup Program, Division of Waste Management of DENR, said that the origin of the Program was two-fold: clean up existing sites and provide a structure to prevent other site contamination. (*SEE ATTACHMENT: Dry Cleaning Solvent Cleanup Report.*)

There are at least 275 contaminated dry cleaning sites in the state, 200 are in the Program. Risk-Based Rules, i.e. clean up and close out goals, were put into effect in 2007. This brought an increase in activity in the program. Three sites have been closed; another nine sites should be closed by the end of the fiscal year. Clean water has been provided to those with contaminated water supplies; usually through the extension of water lines.

The Program considers vapor intrusion a major problem and soil excavation and other measures have been undertaken to allow other businesses to move into former sites. In prevention and identification, Mr. Powers said there is an estimated 1,500 contaminated new sites in the State and only about 20% have been identified and included in the Program. A portion of the funding provided is being used for this identification effort.

### **SOLID WASTE REPORTS**

Mr. Paul Crissman, Chief of the Solid Waste Section of the Division of Waste Management of DENR, provided the ERC with findings of the report based on the various statutory requirements. (*SEE ATTACHMENTS: Annual Solid Waste Management Report*)

Mr. Crissman said that waste will continue to be a dynamic activity in the State given the growing population. The large scale activity of waste handling requires that some waste is sent out of State. Other locations are seeking sites in North Carolina to accept that waste. As he put it, garbage is “not recession proof”. Mr. Crissman said that the first year of the disposal tax will be reflected in the disposal rates. The presentation included slides of the percentage of changes in landfill acceptance and the capacity of landfills.

### **Next Meeting**

The next meeting of the ERC is scheduled for Thursday, January 22, 2009 in Room 544 of the Legislative Office Building.

Minutes by Ted Harrison